

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 15-44578

SHANTA CORPORATION,

Chapter 11

Debtor.

Judge Thomas J. Tucker

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ORDER REQUIRING DEBTOR TO AMEND DISCLOSURE STATEMENT

On May 12, 2015, Debtor filed a plan and disclosure statement, in a document entitled "Debtor's Combined Plan of Liquidation and Disclosure Statement" (Docket # 64). The Court cannot yet grant preliminary approval of the disclosure statement contained within this document ("Disclosure Statement"). The Court notes the following problems, which Debtor must correct.

First, in Section IV.f of the Disclosure Statement on pages 36-37, Debtor lists four additional secured creditors, whose claims are not classified or treated in the Plan. Debtor must classify and treat each of these secured creditors, in a separate class of the Plan.

Second, with regard to each secured creditor treated in Class I through Class III on pages 13-14 of the Plan, and each additional secured creditor treated in a class in the Plan, Debtor must state the amount of the creditor's claim without regard to the value of the collateral; the property securing the claim (if real estate, the full address, including city and state); the fair market value of the property securing the claim; whether any portion of the claim is unsecured; and if so, whether the secured creditor will have an unsecured deficiency claim, to be included and treated in the class of general unsecured claims; and if so, the amount of such unsecured claim. If more than one secured creditor has a lien on property, Debtor must state the priority of each secured creditor (*e.g.*, which creditor has a first priority lien and which creditor has a second priority

lien). With regard to claims that are secured because the creditor has a right of setoff (*see* 11 U.S.C. § 506(a)(1)), Debtor must state: (1) the amount the creditor claims Debtor owes to it; (2) the amount Debtor claims the creditor owes to it; (3) whether the creditor is undersecured, and if so, the amount of the deficiency; and (4) whether the unsecured portion of the creditor's claim will be treated as a general unsecured claim.

Third, Paragraph 5.9 of the Plan on page 19 states, in relevant part:

In no event shall any Holder of Claims be entitled to setoff any Claim against any Claim, right, or Cause of Action of the Debtor, Reorganized Debtor or Creditor's Trust unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and **notwithstanding any indication in any Proof of Claim** or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to Section 553 of the Bankruptcy Code or otherwise.

(Emphasis added). However, Paragraph 13.2 of the Plan on page 25 states, in relevant part:

“Unless expressly asserted in the Chapter 11 Case **through the filing of a Proof of Claim** or otherwise provided under Article III, all setoffs and counterclaims are waived pursuant to Article V of this Plan.” (Emphasis added). While Paragraph 5.9 indicates that filing a Proof of Claim that asserts a right of setoff is not sufficient to preserve a right of setoff under 11 U.S.C. § 553, Paragraph 13.2 seems to indicate that it is. Debtor must correct this apparent inconsistency.

Fourth, in Section I.C of the Disclosure Statement on page 28, Debtor must revise the references to a Chapter 11 “plan of reorganization,” to instead refer to a “plan of liquidation,” because that is what Debtor is proposing in this plan.

Fifth, in Section III.b of the Disclosure Statement on page 32, Debtor must state whether any post-petition financing orders have been entered.

Sixth, some of the pages containing the exhibit numbers have been scanned upside down. Debtor must correct this.

Seventh, Debtor must revise its Liquidation Analysis, attached to the Disclosure Statement as Exhibit B, (1) to update the Liquidation Analysis (it is dated “as of May 1, 2012”); and (2) to include additional columns next to each asset which state the secured creditor(s) who have a security interest in the collateral, the amount of the security interest, and whether there is any equity remaining after considering the amounts owed to creditors having a security interest in the asset.

Eighth, in Section V.a.ii of the Disclosure Statement on page 37, Debtor states, regarding post-petition financial information which is required to be included in the Disclosure Statement: “See the Debtor's monthly operating report, which **will** be timely filed with the Court and appear on the Court's docket. For a copy of the Debtor's monthly operating report(s), please contact the Debtor's counsel.” (Emphasis added). No monthly operating reports have been filed. Debtor must file all monthly operating reports or otherwise provide the required post-petition financial information in the Disclosure Statement.

Ninth, Debtor must modify Section VI.E of the Disclosure Statement on pages 40-41, so that it states in its entirety:

E. Effect of confirmation

If the plan is confirmed by the Court:

1. *Its terms are binding on the debtor, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.*

2. *Except as provided in the plan and in 11 U.S.C.*

§ 1141(d):

(a) In the case of a corporation that is liquidating and not continuing its business, as in this case:

(1) Claims and interests will not be discharged.

(2) Creditors and shareholders will not be prohibited from asserting their claims against or interests in the debtor or its assets.

Accordingly,

IT IS ORDERED that no later than **May 20, 2015**, Debtor must file an amended combined plan and disclosure statement that is consistent with this Order.

IT IS FURTHER ORDERED that no later than **May 20, 2015**, Debtor also must file a redlined version of the amended combined plan and disclosure statement, showing the changes Debtor has made to “Debtor’s Combined Plan of Liquidation and Disclosure Statement” filed May 12, 2015.

Signed on May 15, 2015

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge